

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3405 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JAIN SEVA MANDAL

Versus

MOHANBHAI NARSIBHAI PATEL

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Appearance:

MR HD DAVE for Petitioner

None present for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/02/98

ORAL JUDGEMENT

1. Challenge has been made by the petitioner by this special civil application to the award of the Labour Court, Navsari, made in Reference (LCN) No.411/83 decided on 25th March, 1986.

2. The Labour Court, Navsari held that the action of the petitioner herein in terminating the services of the respondent-workman herein is illegal. The petitioner was

directed to reinstate the respondent-workman on his original post with continuity of service and with full backwages within one month from the date of publication of the award.

3. Challenging the legality, validity and correctness of the award impugned in this special civil application, the learned counsel for the petitioner contended that the award of the Labour Court is without jurisdiction as the petitioner, Jain Seva Mandal, which is a registered public trust is not an 'industry'. In support of this contention, the learned counsel for the petitioner placed reliance on the decision of this Court in the case of Manager, Shri P.J. Derasar, Patna, Dist. vs. M.G. Baloch reported in 1993 (1) LLJ 523. It has next been contended that the respondent-workman himself has voluntarily offered his services and in lieu of his services which he was rendering to the trust, he was paid some honorarium. So it is not the case of any relationship of employer and employee. It has next been contended that the day on which the services of the respondent-workman were terminated, he had already attained the age of 61 years and as per the model standing orders, the age of superannuation would have been only 58 years or 60 years. There was no question of passing of any award of reinstatement in the matter by the Labour Court. Carrying this contention further, the learned counsel for the petitioner, contended that the respondent-workman has not discharged his duties satisfactorily and secondly, he absented himself without any cause for about one month. He was using the rooms of the trust as godown for his business of mangoes. Further he made improper use of the building of the Mandal. Lastly, the learned counsel for the petitioner contended that the Labour Court has committed error in passing of the award without giving any opportunity of making submissions to the counsel for the petitioner as due to some unavoidable circumstances the counsel for the petitioner could not remain present for making the submissions before the Labour Court on the day fixed.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner.

5. This petition was admitted by this Court and ad-interim stay in terms of para-7(c) has been granted on the condition that the petitioner shall deposit a sum of Rs.9000/- within two weeks from the date of the order. This Court has further ordered that on such deposit, liberty to the respondent to withdraw the said amount

without furnishing security subject to the result of the petition. So the respondent-workman got Rs.9000/- in the matter.

6. I do not consider it necessary to advert to all the contentions raised by the learned counsel for the petitioner for the simple reason that this petition deserves to be accepted on the ground that on the day on which the services of the respondent-workman were dispensed with, he had already attained the age of 61 years. From the order of the Labour Court it is clear that the respondent-workman already crossed the age of 61 years on the date on which his services were terminated by the petitioner. So even if it is taken that the petitioner is an 'industry' and the respondent is a 'workman' then the model standing orders are certainly applicable to the petitioner. Those model standing orders, unless contrary is proved by the respondent, are binding on the respondent also. Under the model standing orders, the age of retirement has been fixed to be of 60 years for the class to which the respondent-workman belong. So the termination of the services of the respondent-workman, may be for whatever reason, is nothing but only the case where the respondent-workman is ordered to be retired from the services or it may be taken to be a case where the respondent-workman was ordered to be retired from the services. When the respondent-workman has attained the age of superannuation, there was no question for grant of relief of reinstatement and full back wages to him. This fact has come on the record of the Reference before the Labour Court that on the date on which the services of the respondent-workman were terminated he attained the age of 61 years but still the Labour Court has granted the relief of reinstatement with full backwages, which award cannot be allowed to stand.

7. In the result, this special civil application succeeds and the same is allowed, and the award of the Labour Court, Navsari, made in Reference (LCN) No.411/83 dated 25th March, 1986 is quashed and set aside. Rule is made absolute with no order as to costs.